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## CONSUMER GOODS AND MAINE EXPRESS AND IMPLIED WARRANTY LAWS

### § 4. 1. Introduction

This consumer rights chapter describes your significant protection under the Maine Implied Warranty Laws. It contains the following sections:

#### § 4. 2. Implied Warranty In Addition To Any Express Warranty

#### § 4. 3. Implied Warranty Of Merchantability

#### § 4. 4. Three Part Test For Implied Warranty Violation

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### § 4. 2. Implied Warranty In Addition To Any Express Warranty

Maine law provides automatic warranty protection in addition to any “express” written or verbal warranty (guarantee) you received from the seller or manufacturer.<sup>1</sup> This “implied” warranty remedy is

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<sup>1</sup> A seller’s express warranty can be a written or verbal guarantee. *See Courtney v. Bassano*, 733 A.2d 73, 995 (Me. 1999) (antique dealer’s failure to honor express warranties violates Maine Unfair Trade Practices Act and consumer awarded restitution and attorney fees). Mere “sales talk,” however, should not be considered a U.C.C. express warranty. *See Miller v. Lentine*, 495 A.2d 1229 (Me. 1985). In this case the court held that a dealer’s statement describing a used outboard motor as being “in perfect running condition” constituted “puffing” or “sales talk,” not the creation of an express warranty; *but see Sullivan v. Young Bros. and Co. Inc.*, 893 F.Supp.1148,1159 (pursuant to 11M.R.S.A. §2-313, an express warranty is created by a seller whenever that seller makes any representation with regard to the product sold);

not widely known, but it is very important.

All new and used goods purchased for family, household or personal use—clothes, new cars, appliances, sports equipment and more—are warranted by law to be fit for the ordinary purpose for which such goods are used. They cannot be seriously defective. This warranty is known as the implied warranty of merchantability and is found in the Maine Uniform Commercial Code (U.C.C.).<sup>2</sup> The only exception to this law is that used car dealers can disclaim your implied warranties when they sell you a used car “as is”, without any express warranty.<sup>3</sup>

In addition to these U.C.C. warranties, consumers can also be protected by Maine’s negligence law<sup>4</sup> (when a business breaches its duty of care to the consumer) and Maine’s strict product liability law.<sup>5</sup>

## § 4. 3. Implied Warranty Of Merchantability

The implied *warranty of merchantability* is created by Maine law and means that the product will be “fit for the ordinary purposes” for which such products are used.<sup>6</sup> For example, washing machines must be fit for washing clothes. They must be able to do the job washing machines ordinarily do and to last for as long as washing machines ordinarily last. The same is true for toasters, new automobiles, mobile homes, clothing, furniture and every other item you purchase for *family, household or personal use*. To prove a breach of the implied warranty of merchantability you must show that the product was defective in design, materials, or workmanship.

Normally, a state’s U.C.C. allows a seller to disclaim implied warranties and give you only an express warranty or no warranty at all (the item is sold “as is”). However, in the Maine U.C.C., a seller is prohibited from disclaiming implied warranties on consumer goods and services.<sup>7</sup> In other words, if

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*Guiggey v. Bombardier*, 615 A.2d 1169, 1172 (Me.1992) (salesman phrases such as “runs nice” or “will go good” created express warranty pursuant to 11M.R.S.A. §2-313(1)). The issue for each case is whether the “sales talk” or “puffery” was the “basis of the bargain.” See *McLaughlin v. Denbarco, Inc.*, D. Me. 2001, 129 F. Supp. 2d. 32 (puffing about future performance did not constitute an express warranty).

<sup>2</sup> 11 M.R.S.A. § 2-314. “Goods” are defined in the U.C.C. as “all things (including specially manufactured goods) which are movable at the time of identification to the contract.” 11 M.R.S.A. §2-105 (1).

<sup>3</sup> 10 M.R.S.A. § 1473. See Chapter 9 in this Guide, §§ 9.6 and 9.13.

<sup>4</sup> See e.g., *Pelletier v. Fort Kent Golf Club*, 662 A.2d 220, 221-22 (Me. 1995) (a business owner has a general duty to exercise reasonable care to prevent injury to business invitees).

<sup>5</sup> 14 M.R.S.A. § 221. See *Sullivan v. Young Bros. & Co., Inc.*, 91 F. 3rd 242, 254 (1st Cir. 1996) (boat builder strictly liable for installing “defective” and “unreasonably dangerous” part); *Stanley v. Schiavi Mobile Homes, Inc.*, 462 A.2d 1144 (Me. 1983).

<sup>6</sup> 11 M.R.S.A. § 2-314(2)(c). Whether a good is so substantially impaired as to not be merchantable can have both a subjective and objective element. See Donald Garland, *Determining Whether A Nonconformity Substantially Impairs The Value of Goods: Some Guidelines*, 26 UCC L.J. 129-143 (1993):

Most commentators and courts have agreed that there is both a subjective and objective aspect to the determination of whether the value of goods have been substantially impaired as to a buyer. To satisfy the objective aspect of the substantial impairment test, the buyer must introduce objective evidence that indicates that the value of the goods was substantially impaired with respect to his own needs. The objective element is imposed in order to bar revocation for trivial defects or for defects that may easily be corrected. However, the value to the buyer is to be measured by the essential purpose for which the goods were purchased in the first place, and not by the financial ability of the buyer to cure the defects himself....These cases demonstrate that a seller takes its buyer as it finds him. That is, the buyer’s unique circumstances must be taken into account and the good must not contain a nonconformity that would substantially impair its essential purpose, and hence, its value as to a reasonable person in the buyer’s unique circumstances.

<sup>7</sup> 11 M.R.S.A. § 2-316(5).

a *new or used* consumer good is sold in Maine “as is,” this means only that the seller is not giving you an *express* warranty.<sup>8</sup> So even if sold “as is,” the item *does* come with an implied warranty of merchantability. The only exception to this rule is when the item being sold is a used car.<sup>9</sup> See Chapter 9 in this Guide.

Used car dealers can disclaim implied warranties and will usually do so on the Used Car Information Act window sticker (see Chapter 9, § 9.2). Please note: implied warranties in Maine do not necessarily apply to products for business use as opposed to consumer use.

A good example of a breach of implied warranty is found in the Maine case of *Faulkingham v. Seacoast Subaru, Inc.*, 577 A.2d 772, 774 (Me. 1990) in which Karen Faulkingham on October 13, 1987 purchased a used 1984 Chrysler Laser with an odometer reading of 22,194 miles at a price of \$6,495. The car subsequently suffered from a lengthy series of defects. Although used car dealers are allowed to disclaim implied warranties (the only Maine merchant allowed to do so), in this case, the dealer failed to do so. After hearing the facts the court found a breach of the Maine implied warranty:

There was substantial evidence showing that the Laser failed to perform up to the level reasonably expected of a car of its age, mileage and purchase price. See *Dale v. King Lincoln-Mercury, Inc.*, 676 P.2d 744, 748 (Kan. 1984) (implied warranty of merchantability varies with age, mileage and purchase price of car). Moreover, there was no credible evidence suggesting that the Laser’s engine problems originated after plaintiff took possession of the car. See, e.g., *Worthey v. Specialty Foam Products, Inc.*, 591 S.W.2d 145, 149-50 (Mo. App. 1979). Accordingly, we hold that the evidence was sufficient to support the District Court’s finding that defendant breached its implied warranty of merchantability.

If you have been the victim of a breach of the implied warranty, then you are generally entitled to your incidental and consequential damages (e.g., *free* repairs by *either* the manufacturer *or* the seller). Please note: In order to preserve your warranty rights you should *always* give both the dealer and the manufacturer *written notice* of the defect.

If you closely examine the written warranty on your new car or other new consumer goods, you will probably see in small print such words: “Your rights may vary from state to state: check your own state law for additional rights.” Or: “Some states prohibit limitation of warranty rights or remedies.”

These words are required to be there to alert you to the fact that as a consumer living in Maine you have additional warranty rights—the *implied warranty of merchantability*—beyond the written warranty. If the written warranty does not have this type of language, it may violate Maine law. Please let us know if this language is not included in the written warranty.

Further, manufacturers or Maine retailers cannot limit your rights to incidental or consequential damages<sup>10</sup> for breach of your implied warranty rights if the defective item is a consumer good (for family, household or personal use).<sup>11</sup>

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<sup>8</sup> Even when an item is sold “as is” the merchant must disclose known substantial defects. See *V.S.H. Realty, Inc. v. Texaco, Inc.*, 757 F.2d 411 (1st Cir. 1985).

<sup>9</sup> 10 M.R.S.A. § 1473. See Chapter 9 in this Guide

<sup>10</sup> 11 M.R.S.A. §§ 2-714(3), 2-715. A seller of a dangerously defective good can also be sued under Maine’s strict liability law if the buyer’s physical injury should have been reasonably foreseen by the seller. 14 M.R.S.A. § 221. Tort product liability claims can be based on design defects, manufacturing defects, or failure to warn. See *Porter v. Pfizer Hosp. Products Group, Inc.*, 783 F. Supp. 1466 (D.Me. 1992).

<sup>11</sup> 11 M.R.S.A. § 2-316(5)(a).

## § 4.4. Three Part Test For Implied Warranty Violations

In general, the Implied Warranty of Merchantability law applies to you if you have purchased a new or used consumer item and:

- A. The item is so poorly designed or made that it is seriously defective<sup>12</sup> and its use is impaired<sup>13</sup>;
- B. You have not abused it;<sup>14</sup> and
- C. It was purchased less than four years ago<sup>15</sup> and it is still within its normally expected “useful life” (i.e., it has not simply worn out).<sup>16</sup>

<sup>12</sup> See *Suminski v. Maine Appliance Warehouse*, 602 A.2d 1173 (Me.1992). The court found that consumer Suminski did not prove that his 13-month-old television (which came with a 12-month express warranty) was so defective as to violate the Maine implied warranty law:

The District Court heard evidence that Suminski bought a new expensive television set which began to turn off automatically after thirteen months. No evidence was presented concerning the specific defect in the product. In some circumstances, a breach of the implied warranty of merchantability under the U.C.C. may be established by circumstantial evidence. See e.g. *A.A.A. Exteriors, Inc. v. Don Mahurin Chevrolet & Oldsmobile, Inc.*, 429 N.E.2d 975, 978 (Ind.App.1982). In the case at bar, however, the television set was in all respects satisfactory during approximately thirteen months after it was purchased. For all that appears in the record, the malfunction at that time may have resulted from a defective switch, repairable at a small cost. We conclude that the sale of a major appliance with a switch that fails more than a year later cannot support a finding that the entire appliance was unmerchantable when sold. To use an automotive example, an unmerchantable battery may not render an entire vehicle unmerchantable. Cf. *Tallmadge v. Aurora Chrysler Plymouth, Inc.*, 605 P.2d 1275,1278 (Wash.Ct.App.1979); *Tracy v. Vinton Motors, Inc.*, 296 A.2d 269, 272 (Vt. 1972).

However, if Mr. Suminski had introduced sufficient evidence to prove that the television was seriously defective and expensive to repair, then the court could indeed have had sufficient grounds to find that the television breached the implied warranty of merchantability. But Mr. Suminski failed to do so, so his warranty claim was denied.

<sup>13</sup> See *Lorfano v. Dura Stone Steps, Inc.*, 569 A.2d 195, 197 (Me. 1990) (because plaintiff did not show that the steps failed to perform as expected, manufacturer was not found to have breached implied warranty of merchantability by selling steps without handrail); see also *Innis v. Methot - Buick Opel, Inc.*, 506 A.2d 212, 219 (Me. 1986) (“Any defect that shakes buyer’s faith or undermines his confidence in reliability and integrity of purchased item is deemed to work a substantial impairment of item’s value....”) (quoting *McCullough v. Bill Swad Chrysler-Plymouth, Inc.*, 449 N.E.2d 1289, 1294 (Ohio, 1983)); *Oceanside at Pine Point v. Peachtree*, 659 A.2d 267, 271 (Me.1995) (purchases of condominium constructed with defective windows may have implied warranty claim against manufacturer of windows).

<sup>14</sup> Consumer “abuse” can include misuse of the product and the failure to follow directions for use.

<sup>15</sup> The U.C.C. statute of limitations period (the deadline for bringing a court action) is almost always 4 years from the date of sale (11 M.R.S.A. §2-725). See 11 M.R.S.A. § 2-725, Statute of Limitations. While the U.C.C. Statute of Limitations is 4 years, if the breach of warranty is so severe as to amount to an unfair trade practice (5 M.R.S.A. § 207), then the Statute of Limitations could be 6 years.

<sup>16</sup> The “useful life” of a consumer item is always the subject of debate. A car, for example, may have a relatively short useful life. Simpler machines, such as home appliances, generally have longer useful lives. For example, *Appliance Magazine*, a Dana Chase Publication, has suggested the following life expectancies in years:

Appliance	Low	High	Average
Air-conditioner, room	5	15	11
Dishwasher	5	14	10
Dryer, electric	12	16	14
Dryer, gas	12	14	13
Freezer, standard	10	22	16
Furnace, warm-air, electric	8	20	16
Furnace, warm-air, gas	5	40	19
Furnace, warm-air, oil	7.5	40	20
Microwave oven	5	14	11
Range, freestanding, electric	10	30	17

If you can prove these three elements then<sup>17</sup> you have a good argument that you are entitled to a free repair for breach of the Maine Implied Warranty of Merchantability law. The hardest part of this three part test is proving that the new or used item was so poorly made that it is seriously defective. The easiest case is when the product proves defective a short time after purchase. A harder case would be a used car with significant mileage. In that case the Court deciding the implied warranty claim would take into account the car's age, mileage and purchase price. See *Faulkingham v. Seacoast Subaru, Inc.*, 577 A.2d 772, 774 (Me. 1990).

But even when the defect is latent and does not immediately reveal itself<sup>18</sup> you can still prove your case if you provide sufficient facts. The U.C.C. states that two important merchantability facts are:

- A. Is the item "fit for the ordinary purposes for which such goods are used"?<sup>19</sup>
- B. Does the item "pass without objection in the trade" (e.g., would a significant segment of the buying public object to buying the goods)?<sup>20</sup>

Strong evidence that the item is significantly defective would be a statement by a repair facility that a needed repair would be expensive.

If a defect does not appear immediately then the consumer must show that the item was not abused and did not simply wear out. How long is an item's useful life? A little research can help you make your case. For example, the Consumer Reports's web page ([www.consumerreports.org](http://www.consumerreports.org)) lists the repair records of many items from laptop computers to dishwashers to used cars. One of its charts shows the percentage of five year old products that have ever been repaired or had a serious problem. Here are a few of its findings:

- Laptop Computers – approximately 40%
- Rear Projection TVs – approximately 24%
- Digital Cameras – approximately 15%
- Picture Tube TVs 34"-36" – approximately 11%
- Electric Range – approximately 12%

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Range, freestanding, gas	10	30	19
Refrigerator, standard size	10	20	17
Washer, standard automatic	12	14	13
Water heater, electric	10	18	14
Water heater, gas	8	14	11

<sup>17</sup> "Free" repairs does *not* mean that you still have to pay a "deductible" (e.g., the car manufacturer's \$100 deductible for power train repairs under the extended warranties). This would likely be an illegal limitation of your remedies (11 M.R.S.A. 2-316(5))

<sup>18</sup> See *Heath v. Palmer*, 915 A.2d 1290, 1294 (Vt. 2006) (length of time for latent defects to surface is controlled by the standard of reasonableness); *Masure v. Donnelly*, 962 F.2d 128, 134 (1<sup>st</sup> Cir. 1992) (builder violated Maine Unfair Trade Practices Act when it knowingly sold home with latent defects that did not surface until after closing).

<sup>19</sup> 11 M.R.S.A. §2-314(2)(c) See *Sylvain v. Masonite Corp.* 471 A.2d 1039, 1040 (Me. 1984) (house siding weeks and months after installation began to warp, buckle and swell).

<sup>20</sup> 11 M.R.S.A. §2-314(2)(a). See Consumer Warranty Law §4.2.3.4 (2005). NCCC suggests that a "discrepancy in the model year alone may breach the implied warranty of merchantability, as a 2001 vehicle will not pass as a 2002 vehicle without objection."

See also footnote 17 in this section. If the consumer can prove by a preponderance of the evidence that the item was sold with a latent serious defect, a court could then find a breach of the implied warranty. As one court has stated:

Where there is no evidence of abnormal use, nor evidence of reasonable secondary causes which would eliminate liability of the defendant, courts have permitted the plaintiff to establish a prima facie case based on evidence of malfunction.<sup>21</sup>

## **§ 4.5. “Freezing” Your Express Warranty Rights**

It is advisable to make a complaint to the seller or manufacturer as soon as you become *aware* of a possible defect, since this has the effect of “freezing,” or preserving, whatever express warranty rights<sup>22</sup> you may have at the time of the complaint. If you complain during the express warranty period and the seller cannot repair it before the express warranty period expires, then you have “frozen” your express warranty rights and the seller cannot refuse to make additional repair attempts simply because your express warranty has expired. Remember to put your complaint in writing and keep a copy. This will help you prove when you first complained.

Here in part is what the National Consumer Law Center in its publication *Sales of Goods and Services*, § 24.4 says about the possibility of “freezing” your warranty rights:

When a defect within the scope of the express warranty is discovered and brought to the warrantor’s attention before expiration of the express warranty period, the warrantor must remedy the defect or be liable for breach of the warranty. The express warranty cannot expire for goods not repaired or unsuccessfully repaired problems. Otherwise, the seller could intentionally delay repair or only superficially repair until the express warranty is inapplicable if the seller willfully delayed repair or failed to repair despite its best efforts.<sup>23</sup> In any case, the seller, having failed to deliver a product as contracted, has no ground for complaint.

The more difficult case is when the defect sued upon was discovered after the expiration of the thirty-day or one-year warranty period. The buyer still has several possible arguments. First, the expiration of the express warranty period does not affect any implied warranty.<sup>24</sup> Second, the seller may have made express warranties in addition to the one-year or thirty-day written warranty, such as by oral representation or advertising.

Third, if the seller has remedied the defect earlier, by either providing a new product or part or repairing the defect, the express warranty period

<sup>21</sup> *Makue v. American Honda Motor, Co.*, 835 F.2d 389, 393 (1<sup>st</sup> Cir. 1987).

<sup>22</sup> Any *implied* warranty rights are also “frozen” from the date you formally complain about a defect. But remember, to bring a lawsuit based on breach of warranty you must meet all statute of limitation and notice requirements. For example, U.C.C. warranty lawsuits usually should be filed within four years of the sale (11 M.R.S.A. § 2-725). It is important to consult an attorney on such issues if you are considering taking legal action.

<sup>23</sup> *Lieb v. Milne*, 625 P.2d 1233, 1237 (N.M.App.1980) (buyer of van could sue seller after one-year period expired because defects were brought to the seller’s attention during warranty period).

<sup>24</sup> *Chrysler Corporation v. Wilson Plumbing Co., Inc.*, 208 S.E.2d 321,375 (Ga. 1974) (consumer recovered for breach of express warranty even though warranty period expired when evidence showed breakdown was due to defect the seller had failed to properly fix during the express warranty period).

arguably is extended to cover the new part or the repairs or arguably is tolled (suspended) during the time the buyer did not have full use of the product. Otherwise, the seller can provide a substandard replacement part or make repairs, which only last until the express warranty period expires. If such conduct is suspected, claims can be raised for breach of the warranty, for failure to exercise good faith as section 1-203 [11 M.R.S.A. §1-203] requires, and for negligent repair as well as for unfair and deceptive practices under the state Unfair Trade Practices Act statute.<sup>25</sup>

## **§ 4.6. Length Of Implied Warranty Protection**

No matter what the length of any express warranty you received from the seller or manufacturer, you will have the U.C.C. implied warranty of merchantability for up to four years after purchase.<sup>26</sup> This implied warranty automatically comes with any new or used item and must be honored by both the manufacturer *and* the store that sold it to you. For example, the written warranty you receive with your new car may say that the engine is warranted for 12 months or 12,000 miles. But, in Maine, your warranty protection does not necessarily end at that time. Instead, the car must also perform according to the implied warranty of merchantability. The engine must last, assuming good care and maintenance, for as long as new car engines ordinarily last—usually well beyond 12 months or 12,000 miles. This implied warranty usually cannot last longer than the first four years after purchase<sup>27</sup> and it often can expire more quickly if the item is susceptible to wear and tear (a short “useful life”).

For example, if the transmission on a car fails within the first 20,000-30,000 miles, then you may very well have an implied warranty claim. But, if the car has traveled 90,000-100,000 miles it may be harder to prove that the transmission was defective, instead of simply worn down. But remember, if you want to sue in court for a breach of *implied* warranty, you must bring the court action within 4 years after the vehicle was delivered to you.<sup>28</sup> If the seller’s acts are particularly egregious you might also have an unfair trade practice claim (5 M.R.S.A. §§ 207, 213; *see* Chapter 3 in this Guide) and then the statute of limitations could be 6 years.

## **§ 4.7. Implied Warranty Of Fitness For A Particular Purpose**

In addition to the implied warranty of merchantability, Maine law also provides an *implied warranty of fitness for a particular purpose*. This warranty protects you if the seller knows you are

<sup>25</sup> See e.g., *Inness v. Methot Buick – Opal, Inc.*, 506 A.2d 212, 216 (Me. 1996) (defendant’s failure to honor statutory warranties may constitute evidence of a violation of the UTPA).

<sup>26</sup> 11 M.R.S.A. § 2-725.

<sup>27</sup> The U.C.C. statute of limitations for both express and implied warranties will usually be 4 years from date of purchase. The only exception to this 4-year limitation is when “a warranty explicitly extends to future performance of the goods and discovery of the breach must await the time of such performance.” In such a case, “the cause of action accrues when the breach is or should have been discovered.” See 11 M.R.S.A. § 2-725(2). For example, if you buy a car that comes with a 6 year express warranty on some components (e.g., the drivetrain), then you can bring an express warranty enforcement action for a defective drivetrain up to 6 years after the car’s initial sale to a consumer. Even if the 4-year statute of limitations period has expired, you might still have a remedy. Under 11 M.R.S.A. §2-717, the consumer, on notifying the seller, may deduct all or any part of the damages resulting from the breach of contract from any part of the price still due on the contract.

<sup>28</sup> See *Burke v. Hamilton Beach Division*, 424 A.2d 145, 149 (Me. 1981). The general statute of limitations for a U.C.C. implied warranty action is 4 years. 11 M.R.S.A. § 2-725(2).

purchasing an item for a particular use and you rely on his promises that the item is suitable for that use. If the item is inadequate for your purpose, your rights have been violated.<sup>29</sup> This warranty also cannot be disclaimed on new or used consumer goods.<sup>30</sup>

## **§ 4.8. Seller And Manufacturer Are Both Responsible**

If your implied warranties were breached, both the seller and manufacturer are responsible for any incidental and consequential damages (e.g., they should provide you with free repair or replacement). *See* 11 M.R.S.A. §§2-316(5), 2-318 (lack of privity no bar), and 2-715. For example, if you buy a national brand television from a local store, both the manufacturer and the local merchant are responsible if it breaks due to a defect. This is true for new cars, appliances, and all other consumer goods. We recommend that you deal with the *seller* first if your product doesn't work correctly, is defective, or is damaged. If you cannot solve the problem with the seller, contact the manufacturer and get them both involved. If you cannot resolve your claim with either and you are confident that the problem has occurred because of a substantial defect, you should consider bringing legal action against either the seller or manufacturer or both.

It is possible the seller will admit that the item is defective and direct you to contact the manufacturer for repairs. This is improper. The seller cannot disclaim responsibility. We suggest that you insist that the seller take responsibility for arranging with the manufacturer for repairs.

## **§ 4.9. Unfair Trade Practices Act Violations**

Maine law prohibits “unfair or deceptive trade practices.” If a seller or manufacturer attempts verbally or in writing to *exclude or modify your implied warranties*,<sup>31</sup> then such language is unenforceable and a violation of the Maine Unfair Trade Practices Act (UTPA).<sup>32</sup> *See* Chapter 3, § 3.5. Further, if you have purchased a defective consumer item and the seller or merchant then refuses to honor your implied warranty, this may in certain circumstances be evidence that you may have been the victim of an unfair trade practice.<sup>33</sup> Specifically, in order for a refusal to honor an implied warranty to rise to the level of an unfair trade practice, the refusal must reflect “some attribute of unfairness or deception.”<sup>34</sup>

Under 5 M.R.S.A. § 213 of the UTPA, a consumer can bring an unfair trade practice suit in District Court (including Small Claims Court), or Superior Court, and if successful, receive back damages,

<sup>29</sup> 11 M.R.S.A. § 2-315. *See Lorfano v. Dura Stone Steps*, 569 A.2d 195,197 (Me.1970) (manufacturer of concrete steps did not breach implied warranty of fitness for a particular purpose by selling steps without handrail, absent showing that steps did not perform as expected).

<sup>30</sup> 11 M.R.S.A. § 2-316(5).

<sup>31</sup> When a manufacturer or seller disclaims your implied warranty rights, the effect is to leave you with only whatever express warranty rights (verbal or written) the merchant or seller voluntarily provides as part of the sale. Of course, an express warranty might provide considerably less protection than the Maine U.C.C. implied warranty.

<sup>32</sup> *See* 5 M.R.S.A. § 207; 11 M.R.S.A. § 2-316(5)(a); *see also State v. Bob Chambers Ford, Inc.*, 522 A.2d 362 (Me. 1987).

<sup>33</sup> *See Searles v. Fleetwood Homes of Pennsylvania*, 878 A.2d 509, 520 (Me. 2005) (breach of implied warranty coupled with persistent refusal to take responsibility for repairs can support a finding of unfair or deceptive conduct); *Suminski v. Maine Appliance Warehouse*, 602 A.2d 1173 (Me. 1992) (it can be an unfair trade practice for a seller to refuse to recognize that implied warranties exist on its consumer goods).

<sup>34</sup> *State ex rel. Tierney v. Ford Motor Co.*, 436 A.2d 866, 873 (Me. 1981) (failure to honor implied warranty can be evidence of an unfair trade practice, but is not a *per se* violation of the UTPA); cf. *Burnham et al. v. Mark IV Homes, Inc.*, 441 N.E.2d 1027, 10031 (Mass. 1982).



restitution (the money paid for the item), or any other suitable equitable relief,<sup>35</sup> plus reasonable attorney fees.

## **§ 4.10. Implied Warranties And Services**

These U.C.C. warranty provisions apply to both goods and services.<sup>36</sup> Further, in at least two cases, the Maine Supreme Judicial Court has found that an implied warranty of good workmanship accompanies the sale of services. In *Wimmer v. Down East Properties, Inc.*, 406 A.2d 89, 93 (Me. 1979) the court found that it is a breach of the contractor's implied warranty of good workmanship not to perform work in a "reasonably skillful manner." Similarly, in *Cannan v. Bob Chambers Ford*, 432 A.2d 387, 389 (Me. 1978) the court stated: "There is implied in every contract for worker service a duty to perform skillfully, diligently, and in a workmanlike manner."

## **§ 4.11. Transfer Of Express Warranty Rights**

When a used item is sold, the second buyer may very well receive the benefit of any express warranty rights held by the original buyer. The Maine U.C.C. at 11 M.R.S.A. § 2-318 states or implies that express warranty rights may pass to a subsequent user of the item if that person was someone "whom the manufacturer, seller or supplier might reasonably have expected to use, consume or be affected by the goods." Since most consumer goods are regularly sold used as well as new, there is a strong argument that, within the meaning of this language, a buyer of used goods is a foreseeable user, and should receive the benefit of the manufacturer's express warranty. Remember, in addition to an express warranty, all consumer goods, even used ones, are sold with an implied warranty of merchantability. For used goods, this means that the item at least works. (The only exception is a used car, on which the dealer can disclaim the implied warranty. See Chapter 9 in this Guide, §§ 9.2 and 9.13.) However, a used good may not last very long. Not because it is defective; but because it is old and has exceeded its useful life.

## **§ 4.12. Mail Order or Internet Sales**

Does Maine's implied warranty law apply to mail order or internet sales by Maine consumers? The Maine Long Arm statute (14 M.R.S.A. § 704-A) allows enforcement against out of state sellers. The question the Court would look at is whether the seller is "doing business in Maine." Does the business advertise in Maine? Does the business encourage Maine consumers to contact it in order to buy its products? Does the business deliver its products in Maine? Does it service the products in Maine? Does it provide Mainers with telephone, internet or mail service to work out any problems the consumer may be experiencing? The answers to such questions will allow the Court to decide if the Maine Long Arm Statute should apply. See *Media International v. Pioneer Communications of America, Inc.*, 586 A.2d 1256, 1259 (Me. 1991) (Maine has an interest in providing a means of redress against nonresidents who incur obligations to Maine citizens entitled to the State's protection).

<sup>35</sup> For an enumeration of the equitable remedies available in Maine courts, see 14 M.R.S.A. § 6051 (Superior Court); 14 M.R.S.A. § 152 (District Court); and 14 M.R.S.A. § 7481 (Small Claims Court).

<sup>36</sup> This argument is based on 11 M.R.S.A. § 2-316(5) (which prohibits disclaimers of implied warranties on "consumer goods and services").

## § 4.13. Summary Of Implied Warranty Rights

Remember, all new or used consumer goods sold in Maine (except used cars) come with an automatic implied warranty that the item is not seriously defective. This warranty cannot be disclaimed (denied) by the seller. Here are a summary of your rights:

- A. Maine's implied warranty law applies to all *new* or *used* consumer goods that are sold by merchants, except for used cars.
- B. Used car dealers are allowed to disclaim implied warranty rights and typically do so on the car's Used Car Information window sticker.
- C. The Maine implied warranty law offers the following protection: if you have been sold a *seriously defective* product or component, even if the product has exceeded its *express* warranty period, then *both* the *seller* and the *manufacturer* can be required to repair it for you free of charge. In order to prove a breach of implied warranty you must be able to prove within the first four years from date of sale, that:
  - (1) The item has a serious manufacturer's defect;
  - (2) You have not *abused* the item; and
  - (3) The product (or defective component of the product) is still within its *useful life* (useful life will normally extend at the most four years from the time of sale).
- D. It is an unfair trade practice for a merchant (except a used car dealer) to attempt to disclaim verbally or in writing your implied warranty rights and to thereby limit your rights to an express warranty.<sup>37</sup>
- E. Implied warranty rights and express warranty rights are often automatically transferred to second buyers.<sup>38</sup>
- F. If an item is defective, you should take it back to the dealer and let the dealer arrange the repairs. You should not have to be responsible for returning it to the manufacturer.

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<sup>37</sup> 11 M.R.S.A. § 2-314(5)(a).

<sup>38</sup> 11 M.R.S.A. § 2-318.